



Filed: 2/17/2005

09400HB0152ham001

LRB094 03701 JAM 40757 a

1 AMENDMENT TO HOUSE BILL 152

2 AMENDMENT NO. _____. Amend House Bill 152 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Freedom of Information Act is amended by
5 changing Sections 3 and 11 as follows:

6 (5 ILCS 140/3) (from Ch. 116, par. 203)

7 Sec. 3. (a) Each public body shall make available to any
8 person for inspection or copying all public records, except as
9 otherwise provided in Section 7 of this Act. Notwithstanding
10 any other law, a public body may not grant to any person or
11 entity, whether by contract, license, or otherwise, the
12 exclusive right to access and disseminate any public record as
13 defined in this Act.

14 (b) Subject to the fee provisions of Section 6 of this Act,
15 each public body shall promptly provide, to any person who
16 submits a written request, a copy of any public record required
17 to be disclosed by subsection (a) of this Section and shall
18 certify such copy if so requested.

19 (c) Each public body shall, promptly, either comply with or
20 deny a written request for public records within 7 working days
21 after its receipt. Denial shall be by letter as provided in
22 Section 9 of this Act. Failure to respond to a written request
23 within 7 working days after its receipt shall be considered a
24 denial of the request. The public body may be subject to

1 sanctions pursuant to Section 11(j) of this Act if the court
2 determines that the denial was improper and unreasonable or was
3 invoked for the sole purpose of delaying, without good cause,
4 access to the public record.

5 (d) The time limits prescribed in paragraph (c) of this
6 Section may be extended in each case for not more than 7
7 additional working days for any of the following reasons:

8 (i) the requested records are stored in whole or in
9 part at other locations than the office having charge of
10 the requested records;

11 (ii) the request requires the collection of a
12 substantial number of specified records;

13 (iii) the request is couched in categorical terms and
14 requires an extensive search for the records responsive to
15 it;

16 (iv) the requested records have not been located in the
17 course of routine search and additional efforts are being
18 made to locate them;

19 (v) the requested records require examination and
20 evaluation by personnel having the necessary competence
21 and discretion to determine if they are exempt from
22 disclosure under Section 7 of this Act or should be
23 revealed only with appropriate deletions;

24 (vi) the request for records cannot be complied with by
25 the public body within the time limits prescribed by
26 paragraph (c) of this Section without unduly burdening or
27 interfering with the operations of the public body;

28 (vii) there is a need for consultation, which shall be
29 conducted with all practicable speed, with another public
30 body or among two or more components of a public body
31 having a substantial interest in the determination or in
32 the subject matter of the request.

33 (e) When additional time is required for any of the above
34 reasons, the public body shall notify by letter the person

1 making the written request within the time limits specified by
2 paragraph (c) of this Section of the reasons for the delay and
3 the date by which the records will be made available or denial
4 will be forthcoming. In no instance, may the delay in
5 processing last longer than 7 working days. A failure to render
6 a decision within 7 working days shall be considered a denial
7 of the request. The public body may be subject to sanctions
8 pursuant to Section 11(j) of this Act if the court determines
9 that the denial was improper and unreasonable or was invoked
10 for the sole purpose of delaying, without good cause, access to
11 the public record.

12 (f) Requests calling for all records falling within a
13 category shall be complied with unless compliance with the
14 request would be unduly burdensome for the complying public
15 body and there is no way to narrow the request and the burden
16 on the public body outweighs the public interest in the
17 information. Before invoking this exemption, the public body
18 shall extend to the person making the request an opportunity to
19 confer with it in an attempt to reduce the request to
20 manageable proportions. If any body responds to a categorical
21 request by stating that compliance would unduly burden its
22 operation and the conditions described above are met, it shall
23 do so in writing, specifying the reasons why it would be unduly
24 burdensome and the extent to which compliance will so burden
25 the operations of the public body. Such a response shall be
26 treated as a denial of the request for information. Repeated
27 requests for the same public records by the same person shall
28 be deemed unduly burdensome under this provision.

29 (g) Each public body may promulgate rules and regulations
30 in conformity with the provisions of this Section pertaining to
31 the availability of records and procedures to be followed,
32 including:

33 (i) the times and places where such records will be
34 made available, and

1 (ii) the persons from whom such records may be
2 obtained.

3 (Source: P.A. 90-206, eff. 7-25-97.)

4 (5 ILCS 140/11) (from Ch. 116, par. 211)

5 Sec. 11. (a) Any person denied access to inspect or copy
6 any public record by the head of a public body may file suit
7 for injunctive or declaratory relief.

8 (b) Where the denial is from the head of a public body of
9 the State, suit may be filed in the circuit court for the
10 county where the public body has its principal office or where
11 the person denied access resides.

12 (c) Where the denial is from the head of a municipality or
13 other public body, except as provided in subsection (b) of this
14 Section, suit may be filed in the circuit court for the county
15 where the public body is located.

16 (d) The circuit court shall have the jurisdiction to enjoin
17 the public body from withholding public records and to order
18 the production of any public records improperly withheld from
19 the person seeking access. If the public body can show that
20 exceptional circumstances exist, and that the body is
21 exercising due diligence in responding to the request, the
22 court may retain jurisdiction and allow the agency additional
23 time to complete its review of the records.

24 (e) On motion of the plaintiff, prior to or after in camera
25 inspection, the court shall order the public body to provide an
26 index of the records to which access has been denied. The index
27 shall include the following:

28 (i) A description of the nature or contents of each
29 document withheld, or each deletion from a released
30 document, provided, however, that the public body shall not
31 be required to disclose the information which it asserts is
32 exempt; and

33 (ii) A statement of the exemption or exemptions claimed

1 for each such deletion or withheld document.

2 (f) In any action considered by the court, the court shall
3 consider the matter de novo, and shall conduct such in camera
4 examination of the requested records as it finds appropriate to
5 determine if such records or any part thereof may be withheld
6 under any provision of this Act. The burden shall be on the
7 public body to establish that its refusal to permit public
8 inspection or copying is in accordance with the provisions of
9 this Act.

10 (g) In the event of noncompliance with an order of the
11 court to disclose, the court may enforce its order against any
12 public official or employee so ordered or primarily responsible
13 for such noncompliance through the court's contempt powers.

14 (h) Except as to causes the court considers to be of
15 greater importance, proceedings arising under this Section
16 shall take precedence on the docket over all other causes and
17 be assigned for hearing and trial at the earliest practicable
18 date and expedited in every way.

19 (i) If a person seeking the right to inspect or receive a
20 copy of a public record substantially prevails in a proceeding
21 under this Section, the court may award such person reasonable
22 attorneys' fees and costs. If, however, the court finds that
23 the fundamental purpose of the request was to further the
24 commercial interests of the requestor, the court may award
25 reasonable attorneys' fees and costs if the court finds that
26 the record or records in question were of clearly significant
27 interest to the general public and that the public body lacked
28 any reasonable basis in law for withholding the record.

29 (j) If the court determines that the grounds for delay or
30 denial of access to a public record pursuant to Section 3(c) or
31 3(e) of this Act were improper and unreasonable or were invoked
32 for the sole purpose of delay without good cause, the court may
33 award to the person reasonable attorneys' fees and costs and
34 may assess a fine not to exceed \$1,000.

1 (Source: P.A. 93-466, eff. 1-1-04.)".